

**BEFORE THE SECRETARY OF STATE  
STATE OF COLORADO**

**CASE NO. OS 20080029**

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**AGENCY DECISION**

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**IN THE MATTER OF THE COMPLAINT FILED BY NANCY C. JOHNSON  
REGARDING ALLEGED CAMPAIGN AND POLITICAL FINANCE VIOLATIONS BY  
FAYE GRIFFIN, WALTER GRIFFIN AND THE COMMITTEE TO ELECT FAYE  
GRIFFIN COMMISSIONER DISTRICT 1.**

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**Background**

This matter is a complaint pursuant to Colo. Const. art. XXVIII, sec. 9(2)(a) and the Fair Campaign Practices Act ("FCPA"), Section 1-45-101, C.R.S. *et seq.* Hearing was held November 6, 2008 at the Office of Administrative Courts ("OAC") before Administrative Law Judge ("ALJ") Matthew E. Norwood. The Complainant Nancy C. Johnson, Esq. represented herself. Scott E. Gessler, Esq. appeared on behalf of the Defendants Faye Griffin, Walter Griffin and the Committee to Elect Fay Griffin Commissioner District 1.

This case concerns the failure of the Defendants to list the occupations and employers of eleven contributors of \$100 or more as required by Section 1-45-108(1)(a)(II), C.R.S., Colo. Const. art. XXVIII, sec. 7 and Colorado Secretary of State rule 4.9.2. All rules of the Secretary of State are found at 8 CCR 1505-6 and will be cited by rule number only. The contributions were made in support of Ms. Griffin's candidacy for Jefferson County commissioner.

**Findings of Fact**

Based upon the evidence presented at the hearing, the ALJ finds as fact:

*The Violation*

1. Faye Griffin was a candidate for Jefferson County commissioner in the November 2008 election. The Committee to Elect Fay Griffin Commissioner District 1 ("Committee") was formed on her behalf.
2. Walter Griffin was the treasurer for the Committee. As such he was a person who, with others, had the common purpose of receiving contributions or making expenditures under the authority of a candidate.

3. At the time of her candidacy, Faye Griffin was the Jefferson County Treasurer.

4. On July 17, 2008 Ms. Griffin filed with the Colorado Secretary of State a report of contributions and expenditures of the Committee in accordance with the provisions of Section 1-45-108, C.R.S.

5. Pursuant to Section 1-45-108(2)(a)(II), this report was due July 22, 2008: the 21<sup>st</sup> day prior to the primary election. The ALJ takes judicial notice that the primary election was August 12, 2008.

6. Among other contributions, Ms. Griffin listed eleven contributions of \$100 or more that are at issue in this case. Although she listed the names and addresses of the persons who made these contributions, she did not list the occupation and employer in ten instances and listed the occupation only in the eleventh instance. Instead, Ms. Griffin wrote "unknown."

7. The contributions at issue were made on the following dates: one contribution on February 5, 2008 (\$100), two contributions on March 18, 2008 (\$100 each), five contributions on May 7, 2008 (three for \$250 and two for \$100), one on May 19, 2008 (\$250), and two on June 19, 2008 (\$100 each). These eleven contributions total \$1,700. Ms. Griffin never returned these contributions. Altogether, Ms. Griffin raised approximately \$18,000 in her campaign.

8. Around August 18, 2008 Jefferson County Clerk and Recorder Pam Anderson, whose office was physically near that of the County Treasurer Ms. Griffin, came into Ms. Griffin's office and spoke to her. Ms. Anderson made this visit in response to a complaint she had received. Ms. Anderson let Ms. Griffin know that there was a problem with the fact that the occupation and employer information was missing from the eleven contributions. There is insufficient evidence that Ms. Griffin was aware of the legal significance of these omissions prior to this time.

9. Ms. Griffin and others working on her campaign then gathered the missing information. On August 22, 2008 Ms. Griffin, or someone on her behalf, filed with the Colorado Secretary of State the missing occupation and employer information. Many of the contributors' occupations were described as "retired;" many of the employers were described as "self."

10. There was no evidence of any previous violation of campaign finance laws on the part of any of the Defendants.

*Practice at the Colorado Secretary of State*

11. From time to time employees at the Colorado Secretary of State will examine filings made with the Secretary of State pursuant to Section 1-45-108. In those instances where the employees see that a person has failed to provide occupation and employer information, the employees will notify the person. If the person submits that information in seven days, the Secretary of State will impose no fine.

12. Ms. Griffin's July 17, 2008 report of contributions and expenditures was not examined in this manner by employees of the Secretary of State.

### **Conclusions of Law**

Based on the foregoing Findings of Fact, the ALJ enters the following Conclusions of Law:

1. Section 1-45-108(1)(a) provides in pertinent part:  
1-45-108. Disclosure.  
(1) (a) (I) All candidate committees ... shall report to the appropriate officer their contributions received ....  
(II) In the case of contributions made to a candidate committee ... the disclosure required by this section shall also include the occupation and employer of each person who has made a contribution of one hundred dollars or more to such committee or party.
2. Defendants Faye Griffin, Walter Griffin and the Committee to Elect Fay Griffin Commissioner District 1 all fit the pertinent definition of "candidate committee" at Colo. Const. art. XXVIII, sec. 2(3):  
"Candidate committee" means a person, including the candidate, or persons with the common purpose of receiving contributions or making expenditures under the authority of a candidate. A contribution to a candidate shall be deemed a contribution to the candidate's candidate committee. A candidate shall have only one candidate committee.
3. Also, Colo. Const. art. XXVIII, sec. 7 provides in pertinent part:  
The disclosure requirements of section 1-45-108, C.R.S., or any successor section, shall be extended to require disclosure of the occupation and employer of each person who has made a contribution of one hundred dollars or more to a candidate committee ....
4. Two rules of the Secretary of State are significant for this case. Rule 4.9.2. provides:  
If occupation and employer information as required by Article XXVIII, Section 7 is not provided, and the committee is unable to gather the information within 30 days after receipt of the contribution, the contribution shall be returned to the contributor no later than the 31st day after receipt.

5. Rule 6 provides:

6.1 If the appropriate officer, as defined in Section 2(1) of Article XXVIII, discovers a possible violation of Article XXVIII or Title 1, Article 45, and no complaint alleging such violation has been filed with the secretary of state pursuant to Article XXVIII, Section 9(2)(a), then the appropriate officer shall:

a. Provide the person believed to have committed the violation with written notice of the facts or conduct that constitute the possible violation, and

b. Allow seven business days to correct the violation or to submit written statements explaining the reasons that support a conclusion that a violation was not committed

6.2 If, within the time allotted pursuant to Rule 6.1, the person fails to correct the violation or to offer a satisfactory explanation, then the appropriate officer may file a complaint pursuant to Article XXVIII, Section 9(2)(a).

6. Because all the Defendants fit the definition of “candidate committee,” they are all in violation of Section 1-45-108(1)(a)(II), Colo. Const. art. XXVIII, sec. 7 and Rule 4.9.2. because the contributions were at \$100 or above, did not contain the occupation and employer information and were not returned in 31 days.

7. Section 9 of article XXVIII is the process by which persons who believe there has been a violation may file a written complaint with the Secretary of State. The Secretary of State is then required to refer the matter for a hearing before an ALJ. If the ALJ finds that a violation has occurred, the ALJ is to render a decision including “any appropriate order, sanction, or relief authorized by this article.” Colo. Const. art. XXVIII, sec. 9(2)(a).

8. Section 10 of article XXVIII sets out sanctions that the “appropriate officer” is to impose for violations of certain portions of article XXVIII and the FCPA.

9. Section 1-45-109(1), C.R.S. provides that it is the local county clerk and recorder who is the “appropriate officer” for the filing the disclosures required by Section 1-45-108(1)(a)(II), C.R.S. in the case of elections for county commissioner, see the “All other” language. Section 1-45-109(6)(b) permits, as was done here, the electronic filing with the Secretary of State of disclosures that are to be submitted to the local county clerk and recorder.

10. The Complainant proposes that the ALJ impose a penalty five times the \$1,700 collected by the Defendants according to the pertinent authority at section 10(1) of article XXVIII:

(1) Any person who violates any provision of this article relating to contribution or voluntary spending limits shall be subject to a civil penalty of at least double and up to five times the amount contributed, received, or spent in violation of the applicable provision of this article.

11. The Defendants argue that this subsection is inapplicable because Colo. Const. art. XXVIII, sec. 7 and Section 1-45-108 are both titled "Disclosure." The Defendants argue that these are not provisions "of this article relating to contribution or voluntary spending limits" described in section 10(1). The ALJ agrees.

12. The ALJ concludes that the penalty provisions at section 10(2) are those applicable in this case. That subsection specifically references section 7 of article XXVIII and Section 1-45-108:

(2)(a) The appropriate officer shall impose a penalty of fifty dollars per day for each day that a statement or other information required to be filed pursuant to section 5, section 6, or section 7 of this article, or sections 1-45-108, 1-45-109 or 1-45-110, C.R.S., or any successor sections, is not filed by the close of business on the day due.

13. The missing occupation and employer information was due July 22 but was not provided until August 22, 31 days later. This produces a possible fine of \$1,550 (31 x \$50).

14. Again, though, Section 9(2)(a) requires an "appropriate" sanction. In determining what is appropriate the ALJ considers the fact that it was only the occupation or employer that was left off the report; the name and address of each contributor was provided. The identity at least of Ms. Griffin's contributors was therefore available for the public to consider prior to the election. Also, Ms. Griffin promptly provided the missing information when she learned of a complaint that her report was incomplete. In addition, there was no evidence of any previous violation of campaign finance laws on the part of any of the Defendants. On the other hand, as Jefferson County Treasurer, Ms. Griffin is a relatively sophisticated Defendant who should be expected to have a greater awareness of the applicable requirements.

15. The informal procedure of the Secretary of State in excusing violations if they are corrected within seven days and the provisions of rules 6.1 and 6.2 above are not controlling. The failure to disclose was not discovered as part of an internal Secretary of State review. Also, rule 6.1 is explicitly inapplicable where, as here, there has been a complaint pursuant to Section 9(2)(a).

16. The ALJ therefore determines that \$500 is the appropriate fine. In addition to the above considerations, this fine is of a scale consistent with the \$18,000 amount of Ms. Griffin's total contributions. In light of the fine and the exculpatory

considerations listed above, the ALJ declines to order the return of the contributions per Rule 4.9.2.

### **Agency Decision**

It is the Agency Decision that the Defendants Faye Griffin, Walter Griffin and the Committee to Elect Fay Griffin Commissioner District 1 are together liable for the \$500 fine. The fine shall be deposited in the Department of State cash fund created in Section 24-21-104(3), C.R.S.

This Agency Decision is final and will be subject to review by the Court of Appeals, pursuant to Section 24-4-106(11), C.R.S.

### **DONE AND SIGNED**

November 17, 2008

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MATTHEW E. NORWOOD  
Administrative Law Judge

Exhibits admitted:

For the Complainant: Exhibit 3; exhibit 2 was offered but not admitted.

For the Defendants: Exhibit A.

### **Certificate of Service**

I certify that a true and correct copy of the above **Agency Decision** was placed in the U.S. Mail, postage prepaid, at Denver, Colorado to:

Scott E. Gessler, Esq.  
1601 Blake Street, Suite 310  
Denver, CO 80202

Nancy C. Johnson, Esq.  
12600 West Colfax, Suite C-400  
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and to:

William A. Hobbs  
Deputy Secretary of State  
Department of State  
1560 Broadway, Suite 200  
Denver, CO 80203

on this \_\_\_\_\_ day of November, 2008

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Office of Administrative Courts